

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider regulatory amendments which would establish a mechanism for setting fees to be collected by local districts from major nonvehicular sources of nonattainment pollutants and their precursors to fund part of the Board's California Clean Air Act program for nonvehicular sources for the fiscal years 1997-98 and 1998-99, and any subsequent fiscal years where such fees are authorized by state law.

DATE: January 29, 1998

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the Board which will commence at 9:30 a.m., on January 29, 1998, and may continue at 8:30 a.m., January 30, 1998. This item may not be considered until January 30, 1998. Please consult the agenda for the meeting, which will be available at least 10 days before January 29, 1998, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Proposed adoption of new section 90800.8 and amendments to sections 90802 and 90803, title 17, California Code of Regulations (CCR).

In the California Clean Air Act (the "Act," Stats. 1988, ch. 1568), the Legislature imposed a number of requirements on the Board and the local air pollution control and air quality management districts ("districts") and provided a mechanism to help defray the state costs of implementing the Act.

To offset the increased costs of additional state programs related to nonvehicular sources, the Legislature, in section 39612 of the Health and Safety Code, authorized the Board, beginning July 1, 1989, to require districts to collect fees from holders of permits for facilities which emit 500 tons or more per year of any nonattainment pollutant or its precursors. The total amount of funds collected by these fees, exclusive of district administrative costs, was limited to \$3,000,000 in any fiscal year. The authorization to assess these fees expired on July 1, 1997, but was

reinstated and extended for two additional years with the enactment of Assembly Bill 1583 (Stats. 1997, ch. 713) in October of 1997. The new legislation retained the \$3,000,000 cap for each of the two additional fiscal years.

In 1989, the Board approved adoption of sections 90800-90803, title 17, CCR, establishing the California Clean Air Act Nonvehicular Source Fee Regulations. The original regulations included the fee rate and amounts to be remitted to the ARB by the districts for the first year of the program, fiscal year 1989-90. In each subsequent year between 1990 and 1996 the Board approved amendments to the CCAA nonvehicular source fee regulations to add a new section (sections 90800.1 through 90800.7) identifying the amount of fees to be collected by each district for the following fiscal year. In addition to new fee information, several of the annual rulemakings included amendments to the fee regulations which addressed issues related to the applicability of the regulations and the payment of fees which had arisen during the previous fiscal year.

In this rulemaking, the staff is proposing amendments which would establish a mechanism under which the ARB Executive Officer would identify the fees to be assessed and transmitted by each district in fiscal years (FYs) 1997-1998 and 1998-1999, and in any subsequent fiscal year in which the ARB is authorized by state law to require such fees. The mechanism would eliminate the need for future annual rulemakings, while assuring that the districts and affected sources have the opportunity to provide input on the size of the assessments. Because of the limited time remaining in FY 1997-1998, the proposed amendments establish an abbreviated mechanism for the first year. After FY 1998-1999, there would be no fees assessed unless authorized by future legislation.

Starting with FY 1998-1999, each district would be required to submit to the Executive Officer, no later than April 1 of the preceding year, the name and address of each permitted facility that emitted 500 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available. The districts would also identify the total tons of each facility's emissions during that year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 tons or more in the year. As has previously been the case, a facility will be exempt if its emissions would otherwise be included solely because the facility is in a district which is designated nonattainment for the state ambient air quality standard for ozone solely as a result of ozone transport.

By May 1, the Executive Officer would notify all districts and affected sources of his or her preliminary determinations on the fees to be assessed and the information on which the fees are based. In determining the total amount to be assessed, the Executive Officer first identifies the revenues needed to recover the costs in the fiscal year for additional ARB programs related to nonvehicular sources, up to the maximum amount authorized by the Legislature (\$3,000,000 for FY 1998-1999). He is then to add an "adjustment amount" of up to three percent, designed to recover unforeseen reductions in collections due to unexpected business closures, and to subtract any carry-over excess revenues from the previous fiscal year. A fee per ton is then determined by dividing the total to be assessed by the total tons of nonattainment pollutants or precursors

individually emitted in annual amounts of 500 tons or more from all of the permitted facilities in the state. Finally, the dollar amount to be transmitted to the ARB by each district is determined by multiplying the fee per ton by the total tons of nonattainment pollutants or precursors individually emitted in annual amounts of 500 tons or more from all of the permitted facilities in the district.

The districts, affected sources and interested parties would have a 30-day opportunity to comment on the Executive Officer's preliminary determinations. After considering any comments, the Executive Officer would by July 1 provide written notice of the final determinations. The districts would proceed to assess and collect the fees, and would transmit the specified dollar amount by January 1.

For FY 1997-1998, the Executive Officer is to provide written notification to each district of the fees to be assessed and the determinations on which the fees are based, no later than 15 days after the proposed amendments become operative. The determinations will be as of the January 29, 1998 hearing date, unless the Executive Officer makes a modification that is based on subsequently received information and is explained in the notification. This approach will assure that the districts and sources are aware of the expected amounts and basis of the fees by the time of the Board hearing. Each district will be responsible for transmitting its share of the 1997-1998 assessment to the ARB by June 15, 1998.

As has been the case for the past several years, the amended regulations will continue to provide for: 1) the collection of the emission fees by districts on a dollar-per-ton basis, 2) recovery of administrative costs by the districts, 3) imposition of additional fees on facilities that do not pay in a timely manner, and 4) relief for districts from the fee collection requirements for demonstrated good cause.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSONS

The Board staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts of the proposal, if any. Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from the Board's Public Information Office, 2020 "L" Street, Sacramento, CA 95814, (916) 322-2990. The Board staff has compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the staff person identified immediately below.

Further inquiries regarding this matter should be directed to Don Rake or Cheryl Taylor, Emission Inventory Branch, P. O. Box 2815, Sacramento, California 95812, (916) 322-7304 or (916) 324-7168.

COSTS TO PUBLIC AGENCIES, BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Board's Executive Officer has determined that the regulations will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, except as discussed below, or other nondiscretionary savings to local agencies.

The Board's Executive Officer has determined that local agencies will incur some costs as a result of the proposed regulations, in that air pollution control and air quality management districts will incur administrative costs in collecting the fees. Health and Safety Code section 39612 and section 90802(d), title 17, CCR, authorize the districts to recover these administrative costs from facilities subject to the fees. In administering the program for FY 1996-1997, most but not all districts assessed additional fees to cover their administrative costs. Applying the FY 1996-1997 district fee rates to the expected state fee assessments for FY 1997-1998 indicates that the districts will incur costs of approximately \$81,000 for which they will assess additional fees. The districts' administrative costs are not reimbursable state mandated costs because of the districts' authority to recover the costs through fee assessments.

No local agencies have been identified at this time as operating facilities that would be subject to the nonvehicular source permit fees for fiscal year 1997-98. If any local agencies are required to pay permit fees in subsequent fiscal years, these costs would not be reimbursable state mandated costs pursuant to Government Code section 17500 et seq. because the fee regulations apply generally to all facilities in the state which emit 500 tons or more per year of nonattainment pollutants or their precursors and, therefore, do not impose unique requirements on local government agencies.

The Executive Officer has determined that the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. In FY 1997-1998, approximately 60 facilities in the state are expected to be assessed permit fees under the proposed regulations. Among the operators of these facilities are major oil and gas producers, utilities, and major manufacturing enterprises. It is estimated that the average return on owners' equity for all affected businesses for which financial data are available would have declined by only about 0.02 percent in 1996. The Executive Officer has also determined that the potential cost impact on private persons or businesses directly affected by the proposed regulations will be insignificant.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will have no material impact on the creation or elimination of jobs

within the State of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

The Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulations will not affect small businesses because no major nonvehicular sources subject to the regulations are considered to be small businesses.

Before taking action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the Board, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P. O. Box 2815, Sacramento, CA 95812, no later than 12:00 noon, January 28, 1998, or received by the Clerk of the Board at the hearing.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulations.

STATUTORY AUTHORITY AND HEARING PROCEDURES

The regulations are proposed under that authority granted in sections 39600, 39601 and 39612 of the Health and Safety Code. The regulations are proposed to implement, interpret, or make specific sections 39002, 39500, 39600 and 39612 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 of the Government Code.

Following the public hearing, the Board may adopt the proposed regulations as proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulations with other modifications if the regulations as modified are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action; in such event, the full text of the regulations with the modifications clearly indicated will be made available to the public, for written comment,

at least 15 days before they are adopted. The public may request the text of the modified regulations from the Board's Public Information Office, 2020 "L" Street, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Michael P. Kenny
Executive Officer

Date: December 2, 1997